

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

06-CR-6037L

v.

JULIUS WILLIAMS-BETHAL,

Defendant.

This Court referred all pretrial motions to United States Magistrate Judge Jonathan W. Feldman pursuant to 28 U.S.C. § 636(b). Defendant, Julius Williams-Bethal (“Williams-Bethal”), duly filed motions to suppress oral statements that he made to the police at the time of his arrest on September 14, 2005. Magistrate Judge Feldman conducted a suppression hearing and the transcript of that proceeding (Dkt. #57) has been prepared and made available to this Court.

On July 2, 2007, Magistrate Judge Feldman issued a written Report and Recommendation recommending that Williams-Bethal’s motion to suppress be denied. Defendant’s motions to suppress challenged two statements, one made as Williams-Bethal was taken into custody and before any *Miranda* warnings were given and other involved statements that were made later, after the *Miranda* warnings had been given. Magistrate Judge Feldman recommended that neither statement be suppressed.

Defendant objected to the Magistrate Judge Feldman's Report and Recommendation, but only to that part of the Report relating to the initial statements made prior to administering the *Miranda* warnings.

Magistrate Judge Feldman set forth with precision the facts surrounding the reason the police responded to the area near 11 Morrill Street, in Rochester, New York, and eventually arrested Williams-Bethal. That summary of the facts is not disputed by defendant.

To say the least, the situation facing the police was chaotic and dangerous. The officers responded to the area based on a report from fellow undercover officers, that a man was standing in a high crime area holding a gun. As the several police cars approached the area, two men, including the defendant, fled the scene. Eventually, the officers left their vehicles and chased Williams-Bethal through the neighborhood, and eventually effecting his arrest.

As described by Magistrate Judge Feldman, during the chase, Officer Laslow Tordai, heard a "cracking" sound in the windows of his police vehicle and realized that someone was shooting at his vehicle. When Tordai and another officer finally apprehended Williams-Bethal, Officer Tordai testified that he said that the other officers "why were they shooting at us?" Immediately after Tordai spoke, Williams-Bethal made the statement at issue here: "we were just robbed."

Magistrate Judge Feldman concluded that although Williams-Bethal was "in custody" he was not subject to interrogation and that the challenged statement was a spontaneous one and, therefore, not subject to suppression.

After reviewing the papers and the transcript of the suppression hearing, I agree with Magistrate Judge Feldman's assessment. This was not a situation where the officers were

interrogating a suspect in custody about criminal activity. The officers believed that they had just been fired upon and the situation was stressful and dangerous. I accept the officer's testimony that he was simply inquiring of other officers why shots had been fired. It appeared to more of an attempt to find out what happened and why they had been suddenly placed in danger.

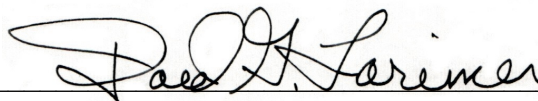
The statement of the officer was not one, in my view, designed to elicit any response from the defendant. Obviously, Williams-Bethal could not have been the shooter since he was hightailing it from the officers at the time. The statements, then, between the officers was not one that was reasonably likely to elicit any response from Williams-Bethal.

Magistrate Judge Feldman also found that the statements made at the police station, after Williams-Bethal had received *Miranda* warnings, should not be suppressed. I agree. Magistrate Judge Feldman made certain findings which are supported by the transcript and Williams-Bethal, does not challenge this part of the Magistrate Judge's Report and Recommendation.

CONCLUSION

I accept and adopt Magistrate Judge Jonathan W. Feldman's Report and Recommendation (Dkt. #63). Defendant's motions to suppress statements (Dkt. ##50, 52) are in all respects denied.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 11, 2007.